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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

13 249
No. ~~14~~, Original

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF TEXAS,

Defendant

**MOTION FOR MORE DEFINITE STATEMENT
OR BILL OF PARTICULARS
AND FOR EXTENSION OF TIME
TO ANSWER OR OTHERWISE PLEAD**

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No. 14, Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF TEXAS,
Defendant

MOTION FOR LEAVE TO FILE

)
The State of Texas, by its Attorney General, subject to its motion to dismiss the complaint filed herein by the United States of America, asks leave of the Court to file its motions for more definite statement or bill of particulars and for extension of time to answer or otherwise plead.

PRICE DANIEL
Attorney General of Texas

**MOTION FOR MORE DEFINITE STATEMENT OR
BILL OF PARTICULARS**

Comes now the State of Texas, the defendant in the above-entitled cause, by its Attorney General, and, subject to its motion to dismiss, moves the Court, in accordance with English rule (Order XIX, Rule 7) and with former Federal Equity Rule 20, and upon the analogy of Rule 12(e) of the Federal Rules of Civil Procedure, for an order requiring the plaintiff to make a more definite statement or to file a bill of particulars as to certain matters in the complaint filed on the 16th day of May, 1949. The complaint is defective because the allegations thereof are not set forth with sufficient definiteness or particularity to enable the defendant properly to frame its responsive pleadings, to prepare for trial, or to be in a position to take advantage of all defenses available to it, in the following respects:

I

As to what times are referred to in the phrase "all times herein material" in paragraph II of the complaint. Specifically, defendant is entitled to know:

A. At what time the plaintiff contends it became "the owner in fee simple of . . . the lands, minerals and other things" in the area described in the complaint. If the fee simple ownership of all of the lands and the minerals and the other things is not claimed to have been acquired simultaneously, the defendant is entitled to know when plaintiff con-

tends that it acquired such ownership of each and whether such acquisition extended to all or only to a portion of the area described in the complaint, and, if the latter, to what portion.

B. At what time the plaintiff contends that it became "possessed of paramount rights in, and full dominion and power over the lands, minerals and other things" in the area described in the complaint. If the paramount rights or the full dominion or the full power are not claimed to have been acquired simultaneously, the defendant is entitled to know when each is claimed to have been acquired. If the paramount rights, full dominion, and full power, or any of them, are not claimed to have been acquired as to lands or minerals or other things simultaneously, the defendant is entitled to know when the paramount rights, full dominion, and full power, or any of them, are claimed to have been acquired in each. If the paramount rights, full dominion, and full power, or any of them, are not claimed to have been acquired simultaneously as to all portions of the lands and minerals and other things, or any of them, the defendant is entitled to know at what time the paramount rights, full dominion, and full power, or any of them, are claimed to have been acquired in each of the respective portions of the lands and minerals and other things, or any of them.

The defendant must be informed of the date or dates on which the plaintiff contends that its ownership, or paramount rights, full dominion, and full power, or any of them, originated, in order that the

defendant may determine the period or periods during which plaintiff's claim is asserted. Defendant's responsive pleading and the nature and type of evidence necessary to meet without surprise the contentions which actually will be made at the trial will vary according to the date plaintiff contends its title originated. For instance, defensive and affirmative pleading and preparation of evidence to meet a claim of title or powers acquired prior to the annexation of Texas in 1845 would vary from that necessary to meet a claim of acquisition at the time of such annexation or subsequent thereto. In the present state of the complaint, defendant cannot fairly be called on to frame a responsive pleading or prepare for trial.

Furthermore, it is apparent that it will be necessary to treat in distinct portions the area described in the complaint and to segregate the ownership or paramount rights, full dominion, and full power as each relates to lands, minerals, or other things within those distinct portions. In this connection, it is obvious that the total area described in the complaint comprises submerged lands which were within the original seaward boundaries of the State of Texas (3 leagues from shore) at the time of annexation and also the lands lying seaward of such original 3-league boundary and between it and the outer edge of the continental shelf. Defendant is entitled to be informed whether and how the claims of plaintiff differ as to these two distinct areas with respect to time of acquisition as well as to other details hereinafter set out. The time of acquisition is also an

essential element in fixing "ordinary low-water mark," as explained in paragraph VIII (See pages 14 to 16, *infra*.)

II

As to the source or sources of plaintiff's alleged ownership in fee simple of the lands, minerals, and other things underlying the area described in the complaint. If the fee simple ownership of all of the lands and minerals and other things is not claimed to have been acquired from the same source, then the defendant is entitled to know from what sources plaintiff contends that it acquired such ownership of each and whether such acquisitions extended to all or only to separate portions of the area described in the complaint, and, if the latter, to what portions.

The plaintiff does not state whether its alleged ownership is derived from discovery, occupation, conquest, cession, purchase, condemnation, or lease; whether it is derived from governmental rights and powers under the Constitution; whether this alleged ownership is vested in it as a member of the family of nations; or in what other manner or from what other source plaintiff acquired such alleged ownership.

Defendant must be informed of the ultimate facts concerning the source or sources of plaintiff's alleged fee simple ownership before it can fairly be called upon to frame its responsive pleadings or make adequate preparation for trial. This is particularly true since, as mentioned in paragraph I above, it is ap-

parent that the total area described in the complaint will have to be treated in distinct portions.

III

As to what paramount rights, full dominion and power are referred to in the phrase, "paramount rights in, and full dominion and power over," in paragraph II of the complaint. Specifically, the defendant is entitled to know:

A. Exactly what paramount rights plaintiff alleges that it possesses in the "lands, minerals and other things" in the area described in the complaint. In this regard, defendant is entitled to know:

1. The source or sources of these rights.
2. The nature of these rights.
3. How the paramount rights in these "lands, minerals, and other things" differ from those in lands, minerals and other things beneath other navigable waters within the boundaries of the State of Texas.

B. Exactly what is meant by and included within the allegation of "full dominion." In this connection, defendant is entitled to know:

1. The source or sources of this dominion.
2. The nature of this dominion and, specifically, whether it refers to that kind of sovereign proprietorship which plaintiff possesses with regard to public lands in States other than Texas; whether it refers to rights of sovereignty which plaintiff possesses with regard

to all lands within the boundaries of the United States; whether it refers to rights which plaintiff possesses with respect only to lands beneath other navigable waters within the boundaries of the State of Texas; or whether it refers to some other character of rights. If the last, defendant is entitled to know their nature and incidents.

3. Whether this "full dominion" is claimed to mean exclusive dominion over the area and control of all governmental activities therein. If not, the defendant should be furnished with full particulars as to the extent of the dominion claimed.

C. Exactly what power it is alleged in paragraph II of the complaint the plaintiff possesses over the "lands, minerals and other things" in the area described. In this connection, defendant is entitled to know:

1. The source or sources of this power.
2. The nature of this power.
3. How this power over the "lands, minerals and other things" differs from that over the lands, minerals, and other things beneath other navigable waters within the boundaries of the State of Texas.
4. Whether this "full power" is claimed to mean exclusive power over the area described in the complaint and control of all governmental activities therein. If not, the defendant should be furnished with full particulars as to the extent of the power claimed.

D. Whether plaintiff claims that the alleged "paramount rights in, and full dominion and power over," or any of them, include ownership or the exclusive right to exercise those rights with respect to the lands, minerals, and other things described in the complaint which ordinarily are incident to ownership of lands and minerals beneath other navigable waters within the boundaries of the State of Texas.

The nature and elements of the concept of ownership in fee simple as claimed by plaintiff are relatively clear and certain, but the alternative claim of "paramount rights in, and full dominion and power over" is wholly devoid of such clarity and certainty. The latter, being a general phrase having no well-recognized or established meaning as to its nature, extent, or elements, fails to advise defendant of what claims it must admit or deny in its responsive pleading and be expected to meet on the trial.

Specifically, plaintiff has certain paramount rights and powers over the area in question which defendant would admit, such as control of commerce, navigation, and national defense. There is a certain type of dominion which the defendant would admit. On the other hand, plaintiff apparently includes in this broad allegation other alleged paramount rights and powers and dominion which defendant would deny. Unless this Court requires plaintiff to plead with more definiteness and certainty the exact nature of the paramount rights, full dominion, and power which defendant is charged with violating and denying, the defendant is at a total loss to know how properly to prepare its responsive pleading. The

burden should not be placed upon the defendant by this generalized pleading to pick out and enumerate all the paramount rights and powers and the type of dominion which it will admit and those which it will deny. Plaintiff, rather than defendant, should be required to bear the burden of enumerating the paramount rights, powers, and dominion which it expects to place in issue by this litigation.

Further, defendant is entitled to know whether plaintiff is claiming by this alternative plea the exclusive power over, the concurrent power over, or the right to determine in the first instance who shall conduct, any or all of the following activities in the area described:

a. Such management, leasing, taking, or using of oyster beds as is subject to and does not interfere with federal control of navigation, national defense, or international affairs.

b. Such management, leasing, taking, or using of kelp (iodine weed) beds and other marine vegetation as is subject to and does not interfere with federal control of navigation, national defense, or international affairs.

c. Such management, sale, removal, or use of sand, gravel, shell, and other non-mineral substances as is subject to and does not interfere with federal control of navigation, national defense, or international affairs.

d. Such management, leasing, or use of submerged lands for construction of piers, wharves, docks, and other structures as is subject to and does not interfere with federal control of navigation, national defense, or international affairs.

e. Such filling in of submerged areas for future construction of improvements and extension of the shore as is approved by the War Department.

f. Collection of taxes on property built upon, in, or over such land.

g. Conservation and proration of oil, gas, and other mineral production thereon.

h. Such management, regulation, or control of geophysical operations as is subject to and does not interfere with federal control of navigation, national defense, or international affairs.

i. Such regulation or control of fisheries (free and sedentary) and other marine life as is subject to and does not interfere with federal control of navigation, national defense, or international affairs.

j. Such establishment, regulation, or control of playgrounds (extending below low-tide) and surf bathing as does not interfere with federal control of navigation, national defense, or international affairs.

k. Those police powers being exercised by the State subject to and without interference with federal control of navigation, national defense, or international matters.

The only specific right or power which can be inferred from the complaint as being claimed by plaintiff is the right to determine in the first instance when, how, and by what agencies the petroleum, gas, and other mineral deposits of the area may be exploited. State management and operation of such mineral resources is the only specific act of the State of Texas complained of as being "in violation of the rights of the United States." If this is the only alleged right, dominion, or power over which there is

alleged conflict or controversy and on which the prayer for injunction is based, plaintiff should be required to define and limit the alternative plea in paragraph II accordingly. If more is claimed, defendant is entitled to know it now in clear and certain terms.

IV

As to what rights of the United States defendant or its lessees are alleged in paragraphs V and VII of the complaint to have violated, failed to recognize, and denied. Specifically, plaintiff should be required to state clearly and definitely the nature of the "rights" claimed by the United States at the following places in the complaint:

A. Line 4, paragraph V, in which plaintiff alleges that the State's lessees "have, in violation of the rights of the United States, paid the State substantial sums of money, entered upon said lands and drilled wells for the recovery of petroleum, gas and other hydro-carbon substances."

B. Line 15, paragraph V, in which it is alleged that neither the State nor its lessees "have recognized the rights of the United States" in the area.

C. Line 1, paragraph VII, in which it is alleged that "the State has frequently and publicly denied the rights and powers of the United States in the area."

D. Line 13, paragraph VII, in which it is alleged that the State will continue to trespass upon the area "in violation of the rights of the United States."

At no place in the complaint are these alleged rights of the plaintiff defined or clearly stated. It is not clear whether "rights" is intended to mean rights of ownership or rights incident to the "paramount rights in, and full dominion and power over" alternatively alleged or both. In any event, and for the same reasons stated in paragraph III of this motion, defendant must know the exact nature of the rights which it or its lessees are alleged to have violated, failed to recognize, and denied before it can make a proper responsive pleading.

V.

As to what alleged "rights" the plaintiff seeks in the prayer in paragraph VII of the complaint to have adjudged and declared and to enjoin the defendant from further allegedly violating..

The generalities and uncertainties of the complaint are emphasized by the general prayer for relief as follows:

"Whereof [sic], plaintiff prays that a decree be entered adjudging and declaring the rights of the United States as against the State of Texas in the area herein described, enjoining the State of Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States. . . ."

The reasons stated in paragraphs III and IV of this motion are equally applicable in support of the above request for more definite statement or more

particulars. The defendant must know before it can prepare a responsive pleading that will properly join the issues in the case, what rights are sought by the plaintiff in this litigation. Specifically, it must know whether the United States is seeking an adjudication and an injunction preventing the exercise by the State of any of those rights listed in "a" through "k" in paragraph III (See pages 9 to 10, *supra*.)

VI

As to what minerals are intended to be included in the phrase "minerals . . . underlying the Gulf of Mexico" in paragraph II of the complaint. Specifically, defendant is entitled to know whether plaintiff claims only those minerals found in the seabed and subsoil within the area described in the complaint or whether it seeks also to claim the minerals or mineral substances in the waters underlying the surface of the Gulf of Mexico.

In this respect, the complaint is defective because the generality of this allegation does not clearly advise the defendant of the specific claim against which it must defend. Unless defendant is so advised, it has no way of knowing the extent of plaintiff's claim, and thus will be unable to frame its responsive pleadings and will be put to unnecessary expense and effort in preparation for trial.

VII

As to what things are intended to be included in the phrase "other things underlying the Gulf of

Mexico" in paragraph II of the complaint. Specifically, defendant is entitled to know:

A. Whether the plaintiff claims only the "other things" found in the lands within the area described in the complaint or whether it seeks also to claim the "other things" in the waters underlying the surface of the Gulf of Mexico.

B. Whether the term "other things" includes all non-mineral substances such as sand, gravel, shell, kelp and other marine vegetation, oysters, sedentary fish, free swimming fish, and other marine life; or only some portion of them, and, if the latter, what portion.

In all fairness to defendant, so it may properly answer and prepare for trial and avoid unnecessary pleading and preparation, if claims to any of these types of property are asserted, plaintiff should be required to plead more definitely what it claims against the State of Texas within the term "other things underlying the Gulf of Mexico."

VIII

As to what is meant by the phrase, "ordinary low-water mark on the coast of Texas" in paragraph II of the complaint. Specifically, the defendant is entitled to know:

A. The low-water mark of what year or time to which the plaintiff refers. It is obvious that the ordinary low-water mark has varied from year to year. Is the alleged ordinary low-water mark that which existed at the time the plaintiff contends that it be-

came "owner in fee simple of, or possessed of paramount rights in, and full dominion and power over" the area or at the time this action was commenced or at some other time, and, if the last, what time?

B. The period the plaintiff contends is determinative of the "ordinary low-water mark." That some period must have been contemplated is indicated by plaintiff's characterization of the low-water mark as "ordinary." In this connection, defendant is further entitled to know:

1. The length of the period which the plaintiffs contend is determinative of the "ordinary" low-water mark. Is this period a day, a week, a month, a year, 18.6 years, or some other period?
2. How the plaintiff claims this determinative period for the ordinary low-water mark is applied with relation to the time plaintiff alleges it acquired its ownership or paramount rights and full dominion. Is the determinative period applied before, after, or partially before and partially after the time of acquisition?

Defendant is entitled to know the length of the period by which the plaintiff fixes the ordinary low-water mark and the relationship which the plaintiff asserts as existing between this determinative period and the time as of which the low-water mark is fixed.

C. Whether low-water mark is measured on artificially filled land along the shore or only on land in its natural state.

D. Whether the "low-water mark" is that line of the high-low or of the low-low tides in the Gulf of Mexico or the mean of low tides.

E. Whether the term "ordinary low-water mark on the coast of Texas" means the ordinary low-water mark measured at every conceivable point along the shore line or only a straight line connecting salient points located at ordinary low-water mark along the shore, and, if the latter, what are these salient points?

Defendant is entitled to know with certainty the lands being claimed by plaintiff, especially the line of demarcation in the valuable area immediately adjacent to the shore.

IX

As to what waters are referred to by the term "inland waters" in paragraph II of the complaint. Specifically, the defendant is entitled to know:

A. The standard or rule followed in fixing the location and extent of the "inland waters" referred to in the complaint.

B. As of what time the location of the "inland waters" is fixed.

C. From what points the lines marking the seaward limits of bays, harbors, rivers, channels, and other inland waters are drawn.

D. Whether waters between the mainland and the offshore islands on the coast of the State of Texas are included within the term "inland waters."

E. If the waters in "D" above are included within the term "inland waters," then from what points on the islands off the coast of Texas or in the adjacent waters are the lines marking the extremities of the inland waters drawn.

Before the defendant fairly can be called upon to prepare, and before it can prepare, its responsive pleading, it is entitled to know, and must know, the line of demarcation between "inland waters" and "the waters of the Gulf of Mexico" which the plaintiff uses as a delimiting boundary to its claim of lands, minerals, and other things. If the plaintiff is not seeking to claim the lands, minerals, or other things beneath certain waters, then the defendant should be told now exactly where the boundary line is which separates those lands, minerals, and other things claimed by plaintiff from those not so claimed.

The ultimate facts concerning the precise extent of the area which plaintiff claims must be set forth in order that defendant may know whether it or its alleged lessees are, and to what extent they are, being charged with trespassing upon the alleged rights of the plaintiff. In the absence of such specification, defendant cannot fairly be called upon to frame a responsive pleading, will be subjected to unnecessary loss of time, effort, and expense in preparation for trial, and may find it impossible to take advantage of all available defenses to plaintiff's claims.

X

As to the precise location of the seaward external boundaries of the area sought to be described in par-

agraph II of the complaint as "extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico." Specifically, defendant is entitled to know the precise location and extent of the alleged "boundary between the United States and Mexico."

It is apparent that the boundary description in the complaint when applied to the physical area off the coast of Texas does not describe a closed area and is therefore vague and indefinite. The Court judicially knows that the United States-Mexican boundary as confirmed by the Treaty of Guadalupe Hidalgo of 1848 and the Gadsden Treaty of 1853, extends seaward of the mouth of the Rio Grande River for a distance of only 3 leagues. The complaint neither alleges ultimate facts showing any alteration or extension of this confirmed boundary so as to cause it to intersect with the edge of the continental shelf, nor does it otherwise identify the point of intersection. Defendant thus is not clearly advised of the precise extent of the area which plaintiff claims.

XI

As to what leases and what wells are referred to in paragraph V of the complaint. Defendant should be informed specifically of the following matters concerning the alleged leases and the wells allegedly drilled thereon:

A. The names of the "various persons and corporations" to which each alleged lease has been granted.

B. The date of the making of each alleged lease.

C. The location of the alleged lease or leases.

D. The location of the alleged wells drilled and producing petroleum, gas, or other hydrocarbon substances in violation of the rights of the United States.

Without this specification in the complaint, defendant cannot know from which particular leases allegedly made by it "substantial sums of money" are alleged to have been paid to it "in violation of the rights of" the plaintiff. Here again, defendant must be furnished with the ultimate facts concerning the specific leases and wells and their location in order to frame a responsive pleading either admitting or denying the plaintiff's allegations. Defendant may admit that some of the leases and wells are within the area described in the complaint. Others, because they are within what defendant claims as inland waters or above low-water mark, defendant will deny are included within the area. Since recovery of moneys received from these leases and wells is sought from defendant in this complaint, every consideration of fairness to defendant in enabling it to prepare for trial and to take advantage of available defenses requires such specification.

XII

As to what moneys are intended to be included in the phrase "all sums of money derived by it from the

area" in the prayer in paragraph VII of the complaint. Specifically, the defendant should and must be informed of the extent of the relief sought by the plaintiff in the following respects:

A. Whether the plaintiff seeks to claim all of the moneys received by the State of Texas from the area described in the complaint since June 23, 1947.

B. If the plaintiff does not seek to claim all of the moneys received by the State of Texas from the area described in the complaint since June 23, 1947, which of the following it does seek to claim:

1. The moneys received from the leasing of oil or gas or other mineral rights.
2. The moneys received from the leasing of oyster beds.
3. The moneys received from the sale, removal, or use of sand, gravel, shell, or other non-mineral substances.
4. The moneys received from the collection of taxes on property built upon, in, or over such land.
5. The moneys received from grants of the privilege of carrying on geophysical operations.
6. The moneys received from the lease of lands (below low-tide) for playgrounds or surf bathing.
7. The moneys received from the sale of lands for the erection of docks, wharves, piers, and other marine structures.
8. The moneys received from the sale of land for the purpose of filling to extend the shoreline of the coast of Texas.

9. The moneys received for submerged lands sold to or condemned by the United States.
10. The moneys received from fishing licenses and fisheries.
11. The moneys received from any source other than those enumerated above.

If the plaintiff seeks to claim the moneys from any one or more of the above sources, then defendant is entitled to know the precise area from which the moneys are alleged to have been received; the character, the date, and the amount of the alleged payments; and the names of the parties making such payments.

C. Whether the plaintiff seeks to claim all of the moneys received from the sources in "B" above, regardless of the date the State of Texas granted or sold such right or privilege, or whether it seeks the moneys received from these sources only in the cases where such right or privilege was granted or sold by the State of Texas after June 23, 1947.

It is necessary that the defendant know the items, the dates, and the amounts for which the plaintiff seeks to require it to account before it properly can prepare a responsive pleading.

The defendant represents that the specification and particularization in the above-indicated respects, sought by this motion for a more definite statement or for a bill of particulars, is needed to enable it properly to frame its responsive pleading and pre-

pare for trial and be in a position to take advantage of all defenses available to it.

Wherefore, this defendant prays that an order be entered directing that plaintiff amplify its complaint by filing a more definite statement or a bill of particulars with respect to the matters above mentioned, and that defendant's time to answer or otherwise plead be extended until sixty (60) days after the filing by the plaintiff of a more definite statement or a bill of particulars.

Respectfully submitted,

PRICE DANIEL

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STATE OF TEXAS,

Defendant

MOTION FOR EXTENSION OF TIME
TO ANSWER OR OTHERWISE PLEAD

Comes now the State of Texas, defendant in the above-entitled cause, by its Attorney General, and, subject to its motion to dismiss, represents to the Court as follows:

This defendant is filing herewith a motion to require plaintiff to amplify its complaint with a more definite statement or a bill of particulars so that defendant may be enabled to prepare a responsive pleading in answer to the complaint, and, for the reasons set forth in said motion, the defendant is unable to make an adequate, informative, and properly responsive answer or otherwise plead to the

said complaint unless and until the said complaint has been amplified and clarified by a more definite statement or a bill of particulars, as requested in said motion.

Wherefore, the defendant respectfully moves that the Court enter an order extending the time within which the defendant may file an answer or otherwise plead until sixty (60) days after the filing by plaintiff of a more definite statement or a bill of particulars as requested in defendant's motion, or, in the event the Court should deny this motion to require plaintiff to file a more definite statement or bill of particulars, then defendant respectfully moves that the Court enter an order extending the time within which this defendant may file an answer or otherwise plead until thirty (30) days after the date on which the Court refuses to grant the motion for more definite statement or bill of particulars.

Respectfully submitted,

PRICE DANIEL

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K. BERT WATSON

Assistant Attorney General

August, 1949.